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Scientific Atlanta, Inc.
5030 Sugarloaf Parkway
Lawrenceville, GA 30044

EXAMINER

SALCE, JASON P

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 06/07/2004

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/929,760

Applicant(s)

HRASTAR ET AL.

Examiner

Jason P Salce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☒ Claim(s) 44 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/05/2004 has been entered.

Interview

2. The examiner thanks applicant's representatives for the telephonic interview conducted 5/25/2004. Applicant's representatives clarified that the first communications path is a telephone link from the subscriber to the headend, and the second communications path is the cable television link from the headend to the subscriber.

Claim Objections

3. Claim 44 is objected to because of the following informalities: Line 2 should read "wherein said dial up". Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-9, 14-16, 21-22, 25-26, 34, 36, 38 and 40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,324,267. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the '267 patent contains all the limitations of the broadly recited claims 1-6, 14-15, 21, 25 and 29 of the instant application, therefore anticipated by the specific '267 patent claim (*In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993)).

Apparatus claims:

Referring to claim 1 of the instant application, applicant discloses identical preambles, as well as a "network manager including at least one database of authorized users and a validation agent" (see Lines 5-6 of claim 1 of the '267 patent).

Also disclosed is that the validation agent comprises, "logic to authorize the subscriber to access a first communications path by comparing first identification information with at least part of the at least one database, the first communications path providing at least a portion of connectivity between the host location and a headend of the cable data delivery network" (see Lines 18-23 or Lines 23-28 of claim 1 of the '267 patent). The examiner notes that the limitations of which level of service is the CATV

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network and the PSTN network is broad, and that either level of service (the first or the second) can be over the CATV network or the PSTN network.

Also disclosed is that the validation agent comprises, "logic to authorize the subscriber to access a second communications path responsive to the first communications path authorization, by comparing second identification information with at least part of the at least one database, the second communications path providing at least a portion of connectivity between the host location and a headend of the cable data delivery network" (see Lines 18-23 or Lines 23-28 of claim 1 of the '267 patent).

The examiner notes that the limitations of which level of service is the CATV network and the PSTN network is broad, and that either level of service (the first or the second) can be over the CATV network or the PSTN network. Also note the added limitation of "responsive to the first communications path authorization", which is also covered by claim 1 of the '267 patent by stating that the "said network" (cable network) is authorized by the use of the USERID and password, and the "dial up device" (PSTN network) is authorized using the electronic identifying number. Therefore one communication path is authorized using USERID and password and the other is authorized using the electronic identifying number, which is all transmitted together.

Allowance of claim 1 would result in the unwarranted time-use extension of the monopoly granted for the invention as defined in patent claim 1.

Claim 2 of the instant application corresponds to patent claim 1, which specifies that identification information includes a subscriber USERID.

Claim 3 of the instant application corresponds to patent claim 1, which specifies that identification information includes a subscriber password.

Claim 4 of the instant application corresponds to patent claim 1, which specifies that a database includes identification information including a subscriber's USERID and password.

Claim 5 of the instant application corresponds to patent claim 1, which specifies that a validation agent authorizes said subscriber to use said first communications path in accordance with a comparison of said subscriber USERID and password to USERIDs and passwords stored in at least one database.

Claim 6 of the instant application corresponds to patent claim 1, which specifies that a host location includes a dial up device and a cable data receiver receives digital data.

Claim 7 of the instant application corresponds to patent claim 1, which specifies that the dial up device is uniquely identified by an electronic identifying number, and wherein said second identification information includes the electronic identifying number.

Claim 8 of the instant application corresponds to patent claim 1, which specifies that the database further includes authorized identifying numbers for each of a plurality of dial up devices including said dial up device.

Claim 9 of the instant application corresponds to patent claim 1, which specifies that the validation agent authorizes said dial up device to receive said digital data over the second communications path in accordance with a comparison of said identifying

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number of said call up device with said identifying numbers stored in said at least one database.

Claim 34 of the instant application corresponds to patent claim 1, where the first identification information is a subscriber's USERID and password and the second identification information is the subscriber's electronic identifying number.

Referring to claim 21 of the instant application, see the rejection of claim 1 of the instant application. The examiner notes that by allowing a subscriber to access either a cable data network or a PSTN by means of the authorization steps disclosed in patent claim 1, the apparatus is inherently providing access to a specific level of service.

Claim 22 of the instant application corresponds to claim 21 of the instant application, where the first level of service (cable network) is at a higher data rate than the second level of service (PSTN). The examiner notes that a cable network is inherently at a higher data rate than a PSTN.

Claim 38 of the instant application corresponds to patent claim 1, where the first identification information is a subscriber's USERID and password and the second identification information is the subscriber's electronic identifying number.

Method claims:

Claim 14 of the instant application corresponds to patent claim 5, where patent claim 5 discloses conveying data between a head end and the subscriber of a cable data network, and patent claim 4 (which patent claim 5 depends from) includes authorizing a user to access a first and second communications path. Also note that

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patent claim 4 also discloses the authorizing steps of a user accessing the first and second communication paths by comparing first and second identification information.

Allowance of claim 14 of the instant application would result in the unwarranted time-use extension of the monopoly granted for the invention as defined in patent claim 1.

Claim 15 of the instant application corresponds to patent claim 14, which discloses that one of the first and second identification information includes a USERID and password.

Claim 16 of the instant application corresponds to patent claim 14, which discloses that one of the first and second identification information includes an electronic identifying number.

Claim 36 of the instant application corresponds to patent claim 5, where the first identification information is a subscriber's USERID and password and the second identification information is the subscriber's electronic identifying number.

Referring to claim 25 of the instant application, see the rejection of claim 14 of the instant application. The examiner notes that by allowing a subscriber to access either a cable data network or a PSTN by means of the authorization steps disclosed in patent claim 1, the method is inherently providing access to a specific level of service.

Claim 26 of the instant application corresponds to claim 25 of the instant application, where the first level of service (cable network) is at a higher data rate than the second level of service (PSTN). The examiner notes that a cable network is inherently at a higher data rate than a PSTN.

Claim 40 of the instant application corresponds to patent claim 5, where the first identification information is a subscriber's USERID and password and the second identification information is the subscriber's electronic identifying number.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Majeti et al. (U.S. Patent No. 5,534,913) in view of Kawashima (U.S. Patent No. 5,818,911).

Referring to claim 1, Majeti discloses a network manager (see element 18 in Figure 1) including at least one database of authorized users (see element 96 in Figure 2) and a validation agent (see element 48 in Figure 1).

Majeti also discloses logic to authorize the subscriber to access a first communications path by comparing first identification information with at least part of the at least one database (see Column 6, Lines 15-20 for the processor 48 conducting a login process using a database 96, which stores subscribers' information and authentication keys, and also note Column 8, Lines 58-67 and Column 9, Lines 1-6 for using such information to verify the communication path used to transmit data to the subscriber (element 10A in Figure 1), the first communications path providing at least a

portion of connectivity between the host location and a head end of the cable data delivery network (see Column 9, Lines 10-36 for determining that the request will require access to only the PSTN network 24 for proper transmission to the subscriber). Therefore, the first communications path (PSTN 24) provides a portion of connectivity (link between subscriber and modems 54A-54N).

Majeti also discloses logic to authorize the subscriber to access a second communication path responsive to the first communications path authorization (see Column 9, Lines 37-67 for the system allowing the user to transmit data requiring a higher bandwidth over the CATV network and again Column 8, Lines 58-67 and Column 9, Lines 1-6 for authorizing the subscriber to makes requests), by comparing second identification information with at least part of the at least one database (see Column 9, Lines 50-57 for comparing the request information to the information in the database to determine if the CATV will be used to transmit the requested data), the second communications path providing at least a portion of connectivity between the host location and the headend of the cable data delivery network (see Column 9, Lines 56-66 for transmitting the data from the headend 30N to the subscriber 20 in Figure 1).

Majeti fails to disclose that the modem(s) 54A-54N are located at the cable headend, therefore not disclosing the limitation "the first communications path providing at least a portion of connectivity between the host location and a headend of the cable data delivery network". Majeti only teaches a "Signal Channel Bridging Unit" 18 for communicating via PSTN and headends 30A-30N.

Kawashima discloses a single service-offering center 1, which discloses a system, which is similar to Majeti, in that Kawashima accepts request data from a third information network (which can be any type of distribution) and distributes the requested data over a first or second distribution network depending on the amount of data that needs to be transmitted. Kawashima specifically discloses at Column 9, Lines 19-67 and Column 10, Lines 1-10 that the third information network can be a PSTN (as also taught by Majeti) and that the first and second transmission networks can be a CATV network, therefore since all connections from all networks are coupled to a single service-offering center 1, Kawashima discloses a single headend for receiving and transmitting all requests.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to combine the split channel bridging unit 18 and headend(s) 30A-30N, as taught by Majeti, using a single service-offering center, as taught by Kawashima, for the purpose of providing data over a network that provides a high capacity of bandwidth than regular PSTN telephone lines can provide, therefore allowing a user to access data at a faster rate (see Column 1, Lines 31-35 and Lines 54-56 of Kawashima).

Claim 2 corresponds to claim 1, where Majeti discloses that the first identification information includes a USERID (see Column 8, Lines 59-61).

Claim 3 corresponds to claim 2, where Majeti and Kawashima fail to specifically teach using a subscriber password as well as a USERID as the identification information. The examiner takes Official Notice that it is well known for a user to log

into a service provider using both an USERID and password. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the USERID, as taught by Majeti, to also include a password, for the purpose of adding an extra level of security to prevent other parties from accessing a subscriber's private information.

Referring to claim 4, see rejection of claims 2-3. Also note Column 6, Lines 17-20 for the database storing the subscriber's information and authentication keys.

Referring to claim 5, see rejection of claims 1-4. Note again that Majeti provides the subscriber access to the first communications path by an authentication process using a USERID (with the password feature being an obvious variation (claim 3)).

Claim 6 corresponds to claim 5, where Majeti discloses that the host location includes a dial up device (element 76 in Figure 1) that further includes a cable data receiver for receiving said digital data (element 62 in Figure 1).

Claims 7-9 corresponds to claims 6-8, respectively, where Majeti discloses sending an user identification code (electronic identifying number) (from modem 76 in Figure 1) to the signal channel bridging unit 18, authorizing the code using a database and transmitting the requested data through the CATV network to subscriber 20 (see Column 6, Lines 15-20, Column 8, Lines 58-67 and Column 9, Lines 1-6).

Claim 10 corresponds to claim 1, where Majeti discloses that the first communications path is a PSTN link (see elements 22 and 24 in Figure 1).

Claim 11 corresponds to claim 1, where Majeti discloses that the first communications path is bi-directional (the examiner notes that a PSTN link is bi-directional).

Claim 12 corresponds to claim 1, where Majeti discloses that the second communications path is an RF cable link (see element 36 in Figure 1).

Claim 13 corresponds to claim 1, where Majeti discloses that the second communications path is uni-directional (see Column 2, Lines 50-52 for only transmitting information on the cable network on the downlink, not the uplink, therefore the second communications path (element 36 in Figure 1, is inherently "uni-directional")).

Referring to claims 14-20, see rejection of claims 1, 4, 7 and 10-13, respectively.

Referring to claim 21, see rejection of claim 1.

Referring to claim 22, the examiner notes that a CATV network (second level of service) contains a higher data rate than a PSTN network (first level of service). The examiner notes that the limitations of which level of service is the CATV network and the PSTN network is broad, and that either level of service (the first or the second) can be over the CATV network or the PSTN network.

Referring to claims 23-24, see rejection of claims 10 and 12, respectively.

Referring to claims 25-28, see rejection of claims 1, 22, 10 and 12, respectively.

Referring to claims 29-32, see rejection of claims 1, 22, 10 and 12, respectively.

Referring to claim 33, Majeti discloses authorizing the user to make requests over the PSTN link (see Column 8, Lines 58-67 and Column 9, Lines 1-6). The

examiner notes that if a user is not authorized to use the system, he/she will inherently not be permitted to access the system.

Referring to claim 34, Majeti discloses that the first identification information and the second identification information are of different types (note that the first identification information is the user logging into the system and the second identification information can be either of the requests cited at Column 9, Lines 10-50). The term "identification information" is broad and can be interpreted as either the user identification code, or the actual request made by the subscriber for information from service provider 10A in Figure 1.

Referring to claims 35-36, see rejection of claims 33-34, respectively.

Referring to claims 37-38, see rejection of claims 33-34, respectively.

Referring to claims 39-40, see rejection of claims 33-34, respectively.

Referring to claims 41-42, see rejection of claims 33-34, respectively.

Referring to claim 43, see rejection of claim 7.

Referring to claim 44, see rejection of claims 6 and 7.

Referring to claims 45 and 46, see rejection of claim 44.

Referring to claim 47, see rejection of claim 47.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P Salce whose telephone number is (703) 305-1824. The examiner can normally be reached on M-Th 8am-6pm (every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on (703) 305-4380. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 25th, 2004


HAI TRAN
PATENT EXAMINER